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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate pagling is given to this Part in order that it may be filed
as a separate compilation

BILL No 129 OF 1977

The following Bills were introduced in Lok Sabha on the 18th November, 1977

BILL No 129 OF 1977

A Bill further to amend the Advocates Act, 1961.

BE it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

1 (1) This Act may be called the Advocates (Amendment) Act, 1977.

(2) It shall be deemed to have come into force on the 31st day of October, 1977

25 of 1961. 2. In section 3 of the Advocates Act, 1961 (hereinafter referred to as the principal Act), for sub-sections (3) and (3A), the following sub-sections shall be substituted, namely —

Short
title and
com-
mence-
ment,

Amend-
ment of
section 3.

“(3) There shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the Council in such manner as may be prescribed

(3A) Every person holding office as Chairman or as Vice-Chairman of any State Bar Council immediately before the commencement of the Advocates (Amendment) Act, 1977, shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be

Provided that every such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as

the case may be, of each State Bar Council, elected after the commencement of the Advocates (Amendment) Act, 1977, assumes charge of the office.”.

Amend-
ment of
section 4.

3. (1) In section 4 of the principal Act,—

(i) in sub-section (1), clause (bb) shall be omitted,

(ii) for sub-sections (2) and (2A), the following sub-sections shall be substituted, namely:—

“(2) There shall be a Chairman and a Vice-Chairman of the Bar Council of India elected by the Council in such manner as may be prescribed.

(2A) A person holding office as Chairman or as Vice-Chairman of the Bar Council of India immediately before the commencement of the Advocates (Amendment) Act, 1977, shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be.

Provided that such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of the Council, elected after the commencement of the Advocates (Amendment) Act, 1977, assumes charge of the office.”.

Amend-
ment of
section 8

4. (1) In sub-section (1) of section 8 of the principal Act, for the words “four years”, the words “five years” shall be substituted.

(2) The amendment made by sub-section (1) to sub-section (1) of section 8 of the principal Act shall apply also to an elected member of every State Bar Council who has not completed the term of four years at the commencement of this Act.

Amend-
ment of
section
15.

5. In sub-section (2) of section 15 of the principal Act,—

(i) before clause (d), the following clause shall be inserted, namely:—

“(c) the manner of election of the Chairman and the Vice-Chairman of the Bar Council;”;

(ii) in clause (d), after the words “election to the Bar Council”, the words “or to the office of the Chairman or Vice-Chairman” shall be inserted.

Amend-
ment of
Section 34

6 In section 34 of the principal Act, after sub-section (1A), the following sub-section shall be inserted, namely:—

“(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith”.

7. In the principal Act, after section 58AF, the following section shall be inserted, namely:—

Insertion of new section 58AG.

107 of 1976.

“58AG. Notwithstanding anything contained in this Act, every person who, immediately before the 31st day of December, 1976, has commenced his articleship and passed the Preliminary examination, for the purpose of enrolment as an attorney of the High Court at Calcutta in accordance with the rules made under sub-section (2) of section 34, before the omission of that sub-section by the Advocates (Amendment) Act, 1976, may be admitted as an advocate on the State roll if he—

Special provisions in relation to article-ed clerks.

(i) passes, on or before the 31st day of December, 1980,—

(a) the Final examination in a case where such person has, before the 31st day of December, 1976, passed the Intermediate examination,

(b) the Intermediate and the Final examinations in any other case.

Explanation.—For the purpose of this clause, the High Court at Calcutta may prescribe such rules as may be necessary under sub-section (2) of section 34, specifying the nature of the examinations and any other matter relating thereto;

(ii) makes an application for such enrolment in accordance with the provisions of this Act, and

(iii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1) of section 24”.

16 of 1977.

8. (1) The Advocates (Amendment) Ordinance, 1977, is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Advocates (Amendment) Act, 1976 made several changes in the Advocates Act, 1961. According to the amended Act, the Attorney-General of India and the Advocates-General of the States became the *ex officio* Chairman of the Bar Council of India and the State Bar Councils, respectively. The Solicitor-General of India became the *ex officio* Vice-Chairman of the Bar Council of India; and the senior-most Advocate from among the elected members of the State Bar Council became the Vice-Chairman of the Council. In the case of the State Bar Council of Delhi, an advocate, nominated by the Central Government, became the Chairman. The Central Government was also empowered to nominate one officer as a member of the Bar Council of India for a period of two years.

2. This amendment has been criticised by several Bar Councils and the members of the public and the legal profession as a retrograde step and as not conducive to the efficient and proper running of the Bar Councils and one which sets at naught the very fundamentals of autonomy of an independent profession. The Central Government has considered the matter *de novo* and it is proposed to amend the Act to restore the democratic principle of elected Chairman and Vice-Chairman for the Bar Council of India and the State Bar Councils. The provisions empowering the nomination of an officer on the Bar Council of India is also proposed to be omitted.

To avoid any disruption in the day-to-day working of the Bar Councils, it is provided that the existing Chairman and Vice-Chairman shall carry on the duties of his respective office till the new Chairman or Vice-Chairman, as the case may be, duly elected, assumes charge of the office.

3. Section 8 of the Act provides for a term of four years for office of elected members of the State Bar Council. As election to the State Bar Councils is a time-consuming process and involves considerable expenditure, the term of office of the members of the State Bar Councils, in relation to which the term has not already expired, is proposed to be increased to five years from the existing four years.

4. One of the major changes brought about by the Advocates (Amendment) Act, 1976, was the abolition of the dual system in the High Courts of Bombay and Calcutta. In Calcutta, however, it was not necessary to possess a Degree in Law for a person to enter into agreement of articleship. In order to remove the hardship caused to the articled clerks who have entered into agreement of articleship before the 31st December, 1976 and who have passed the preliminary examination but not passed the Intermediate/Final examination, it is proposed to empower the Calcutta High Court to hold the Intermediate/Final examination up to 31st December, 1980 for the aforesaid articled clerks, and such of those articled clerks who pass the Final examination will be eligible to be enrolled as advocates.

5 Since Parliament was not in session and urgent action was called for it was considered necessary to issue the Advocates (Amendment) Ordinance, 1977 and the same was promulgated on the 31st October, 1977.

6 This Bill seeks to replace the Ordinance by an Act of Parliament.

NEW DELHI; .

SHANTI BHUSHAN.

The 7th November, 1977.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill empowers a Bar Council to make rules with respect to the manner of election of the Chairman and the Vice-Chairman and the manner in which and the authority by which doubts and disputes as to the validity of such elections shall be decided.

2. Clause 6 of the Bill seeks to insert a new sub-section (2) in section 34 of the Advocates Act, 1961 empowering the High Court of Calcutta to make appropriate rules providing for the holding of the Intermediate and the Final examinations for articulated clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.

3 The matters in respect of which such rules may be made are matters of detail and it is not practicable to provide for them in the Bill. The delegation of legislative power is, therefore, of a normal character.

BILL NO 127 OF 1977

A Bill to repeal the Banking Service Commission Act, 1975

BE it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:-

1 (1) This Act may be called the Banking Service Commission (Repeal) Act, 1977. Short title and commencement.

(2) It shall be deemed to have come into force on the 19th day of September, 1977

2. In this Act, unless the context otherwise requires,— Definitions.

(a) "appointed day" means the 19th day of September, 1977;

(b) "Banking Service Commission" means the Banking Service Commission established under section 3 of the Banking Service Commission Act, 1975.

42 of 1975.

3 On the appointed day the Banking Service Commission Act, 1975, shall stand repealed and the Banking Service Commission shall stand dissolved Repeal of Act 42 of 1975 and the dissolution of the Banking Service Commission.

Conse-
quential
provi-
sions.

4. On the dissolution of the Banking Service Commission,—

(a) (i) the person appointed as the Chairman of the Banking Service Commission, and

(ii) every other person appointed by the Banking Service Commission,

and holding office as such immediately before the appointed day shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service;

(b) any proceeding of whatever nature pending before the Banking Service Commission immediately before the appointed day shall stand terminated;

(c) the balance of all monies (including any fee) received by, or advanced to, the Banking Service Commission and not spent by it before the appointed day shall, on the appointed day, stand transferred to, and shall vest in, the Central Government and shall be utilised for the purposes of clauses (e) and (f);

(d) all property of whatever kind owned by, or vested in, the Banking Service Commission immediately before the appointed day, shall, on the appointed day, stand transferred to, and shall vest in, the Central Government;

(e) all liabilities and obligations of whatever kind incurred by the Banking Service Commission and subsisting immediately before the appointed day shall, on and from the appointed day, be deemed to be the liabilities or obligations, as the case may be, of the Central Government; and any proceeding or cause of action, pending or existing immediately before the appointed day by or against the Banking Service Commission in relation to such liability or obligation may, as from the appointed day, be continued or enforced by or against the Central Government

Explanation—For the purposes of this clause, “liability” does not include any liability for any money advanced to the Banking Service Commission under sub-section (3) of section 19 of the Banking Service Commission Act, 1975;

42 of 1975

(f) all monies vested in the Central Government under clause (c) shall, after deducting the amount incurred for discharging the liabilities and obligations under clause (e), be refunded by the Central Government to each public sector bank as defined in clause (h) of section 2 of the Banking Service Commission Act, 1975, in proportion to the amount advanced by such public sector bank to the Banking Service Commission under sub-section (3) of section 19 of that Act

42 of 1975.

Repeal and
saving.

5. (1) The Banking Service Commission (Repeal) Ordinance, 1977, 10 of 1977 is hereby repealed

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The Banking Service Commission Act, 1975, was enacted with a view to providing for the establishment of a Commission for the selection of personnel for appointment to services and posts in public sector banks. Although the Banking Service Commission was established late in February, 1977, it had not started actual recruitment of personnel for public sector banks. The need for such a Commission was reviewed and it was felt that a centralised system of recruitment in banks, as envisaged by that Act, was likely to interfere with the autonomy and flexibility in the functioning of the public sector banks and that having regard to the large number of persons to be recruited each year, such a system, even with regional offices, was likely to make the recruitment process unwieldy and cumbersome. The object of attaining uniformity, impartiality and objectivity in selection procedures continues to be important, and it was felt that this could be better achieved if suitable guidelines were issued by the Central Government to the banks and a machinery established which will function in a decentralised manner and which will also be run by the banks themselves. It was, therefore, decided to repeal the Banking Service Commission Act, 1975, and to dissolve the Banking Service Commission, with suitable saving provisions. The Banking Service Commission (Repeal) Ordinance, 1977, was accordingly promulgated on the 19th September, 1977. The Bill seeks to replace the Ordinance.

NEW DELHI;

H. M. PATEL.

The 5th November, 1977

FINANCIAL MEMORANDUM

Sub-clauses (c) and (d) of clause 4 of the Bill provide that the balance of all monies received by, or advanced to, the Banking Service Commission and not spent by it as well as all property of whatever kind owned by, or vested in, the Commission shall stand transferred to, and shall vest in, the Central Government. The total amount of the balance money so transferred to the Central Government is Rs. 7,55,390.66.

2. Under sub-clause (e) of clause 4 of the Bill all liabilities and obligations of whatever kind incurred by the Banking Service Commission and subsisting shall be deemed to be the liabilities or obligations of the Central Government. The known liabilities and obligations assumed by the Central Government under this sub-clause work up to Rs. 20,000/-

3. Under sub-clause (f) of clause 4 of the Bill, all monies vested in the Central Government under sub-clause (c) of that clause shall, after deducting the amount incurred for discharging the liabilities and obligations under sub-clause (e) of that clause, be refunded by the Central Government to each public sector bank in proportion to the amount advanced by such public sector bank to the Banking Service Commission under sub-section (3) of section 19 of the Banking Service Commission Act, 1975. The total amount so required to be refunded to public sector banks is likely to be Rs. 7,35,390.66.

4. The Bill if enacted and brought into operation is not likely to involve any recurring or non-recurring expenditure from the Consolidated Fund of India.

Memorandum regarding modification contained in the Bill to replace the Banking Service Commission (Repeal) Ordinance, 1977.

The Bill closely follows the Ordinance with a slight modification explained below

2 In sub-clause (c) of clause 4 of the Bill, the words, brackets and letters "and shall be utilised for the purposes of clauses (e) and (f)" have been inserted at the end. This modification is of a clarificatory nature.

BILL No. 128 of 1977

A Bill to amend the Enemy Property Act, 1968

BE it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows.—

Short title
and
com-
mence-
ment.

1. (1) This Act may be called the Enemy Property (Amendment) Act, 1977.

(2) It shall be deemed to have come ~~into~~ force on the 27th day of September, 1977.

Amend-
ment of
long
title.

2. In the long title of the Enemy Property Act, 1968 (hereinafter referred to as the principal Act), after the words and figures "Defence of India Rules, 1962", the words and figures "and the Defence of India Rules, 1971" shall be inserted. 34 of 1968.

Amend-
ment of
section 2

3. In clause (b) of section 2 of the principal Act, after the words and figures "Defence of India Rules, 1962", the words and figures "or the Defence of India Act, 1971 and the Defence of India Rules, 1971" shall be inserted. 42 of 1971.

Amend-
ment of
section 3

4. In the proviso to section 3 of the principal Act, after the words and figures "Defence of India Rules, 1962", the words and figures "or the Defence of India Rules, 1971, as the case may be" shall be inserted

5. In the proviso to section 4 of the principal Act, after the words and figures "Defence of India Rules, 1962", the words and figures "or the Defence of India Rules, 1971, as the case may be" shall be inserted.

Amend-
ment of
section 4.

6 Section 5 of the principal Act shall be renumbered as sub-section (1) thereof and after that sub-section as so renumbered, the following sub-section shall be inserted, namely —

Amend-
ment of
section 5.

42 of 1971.

"(2) Notwithstanding the expiration of the Defence of India Act, 1971 and the Defence of India Rules, 1971, all enemy property vested before such expiration in the Custodian of Enemy Property for India appointed under the said Rule and continuing to vest in him immediately before the commencement of the Enemy Property (Amendment) Act, 1977 shall, as from such commencement, vest in the custodian."

7 In section 7 of the principal Act, after the words and figures "Defence of India Rules, 1962", wherever they occur, the words and figures "or the Defence of India Rules, 1971, as the case may be" shall be inserted.

Amend-
ment of
section 7

8. In sub-section (2) of section 8 of the principal Act, in clause (x), after the figures, letters and word "25th October, 1962", the words, figures and letters "or on the 3rd December, 1971" shall be inserted.

Amend-
ment of
section 8

9. In sub-section (3) of section 23 of the principal Act, for the words "or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following", the words "or in two or more successive sessions and if, before the expiry of the session immediately following the session, or the successive sessions aforesaid" shall be substituted.

Amend-
ment of
section 23

10. Section 24 of the principal Act shall be renumbered as sub-section (1) thereof and after that sub-section as so renumbered, the following sub-section shall be inserted, namely —

Amend-
ment of
section 24.

"(2) Every order which was made under the Defence of India Rules, 1971 by the Central Government or by the Custodian of Enemy Property for India appointed under those Rules relating to enemy property and which was in force immediately before the expiration thereof shall, in so far as such order is not inconsistent with the provisions of this Act, be deemed to continue in force and to have been made under this Act".

11 of 1977

11. (1) The Enemy Property (Amendment) Ordinance, 1977 is hereby repealed.

Repeal
and
saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Enemy Property Act, 1968 (34 of 1968), was enacted on 20th August, 1968 to provide mainly for the continued vesting of enemy property vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962.

2. Consequent on the aggression by Pakistan in 1971 and the issue of the Proclamation of Emergency on 3rd December, 1971 and the enactment of the Defence of India Act, 1971 and the rules made thereunder, immovable, and some specified movable, Pakistani property in India were vested in the Custodian of Enemy Property in accordance with the provisions of the Defence of India Rules, 1971 and the orders made thereunder.

3. The Proclamation of Emergency issued on 3rd December, 1971 was revoked with effect from 27th March, 1977 and consequently the powers under the Defence of India Act, 1971 and the rules made thereunder were to remain in force only for a period of six months thereafter, i.e. up to and inclusive of 26th September, 1977. It was, therefore, thought necessary to have fresh legal authority with effect from 27th September, 1977 for the administration of the Pakistani properties referred to above which are already vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1971 and the orders made thereunder. It was considered that the management of the said properties by the Custodian of Enemy Property for India has to continue

4. As Parliament was not in session and as the situation called for immediate action, an Ordinance called "the Enemy Property (Amendment) Ordinance, 1977" (11 of 1977) was promulgated by the Vice-President discharging the functions of the President on 23rd September, 1977, so as to suitably amend the Enemy Property Act, 1968 for the continued vesting of the said properties in the Custodian of Enemy Property for India.

5. The present Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;

MOHAN DHARIA

The 4th November, 1977

AVTAR SINGH RIKHY,

Secretary.